Supreme Court, U.S.
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In the Supreme Court

of the United States

OCTOBER TERM 1971

No. 71-887

WILBUR-ELLIS COMPANY, a California corporation,

Plaintiff-Appellant-Petitioner,

v.

M/V CAPTAYANNIS "S," her engines, tackle, apparel and furniture; and her Owner, SARANTEX SHIPPING COMPANY a Panama corporation,

Defendant-Appellee-Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ERSKINE B. WOOD
15th Floor Standard Plaza
Portland, Oregon 97204
Counsel for Respondent

JOHN R. BROOKE
WOOD, WOOD, TATUM, MOSSER & BROOKE
Of Counsel

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 1-72

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REASONS WHY PETITION SHOULD NOT BE GRANTED

No Constitutional or Legal Question Is Involved

The District Court found the proximate cause of the grounding of the CAPTAYANNIS S was an error of navigation by the master (Op. Dist. Ct. Appx. B, Pet. for Cert., p. 25). The Court of Appeals for the Ninth Circuit, after reviewing the record, held the District Court's finding was not clearly errone-

ous and affirmed.[1] (Op. Ct. Appeals, Appx. A, Pet. for Cert., p. 15). Petitioner now asks this Court to review the evidence again.

Petitioner completely misstates the question presented for review in saying:

> "2. Is the shipowner liable for loss of cargo where unseaworthiness concurs with negligent navigation in causing the loss."

The unseaworthiness was *not* a concurring cause. As said in the Court of Appeals per curiam opinion:

> ". . . the court entered judgment for the defendant shipowner, finding that the sole and proximate cause of the ship's stranding was the master's negligent decision to proceed across the Columbia River bar in a storm without a pilot." (Appx. A, Pet. for Cert., p. 14).

The Carriage of Goods by Sea Act, 46 U.S.C. § 1304(2)(a), grants to a shipowner exoneration from liability for a loss resulting from an error of navigation. The District Court simply applied that statutory rule of law to its finding of fact and dismissed the cargo owner's damage action. The Court of Appeals affirmed. There is no special or important constitutional or legal question involved here so as to satisfy the criteria for certiorari set forth generally in Supreme Court Rule 19. The petition merely seeks a review of the evidence and inferences to be drawn from the evidence. This Court pointed out in *General Talking Pictures Corp.* v. *Western Electric Co.*, 304

[1] Federal Rules of Civil Procedure Rule 52(a).

U.S. 175, 58 S. Ct. 849, 82 L. Ed. 1273 (1938), that writs of certiorari will not be granted for that purpose.

The District Court's Finding Was Supported by Evidence

Contrary to petitioner's assertions, there was substantial evidence in the record to show a navigational error by the master. The District Court noted some of that evidence in its opinion:

> "The Master knew that a pilot would be available only if the weather allowed it and he recorded in his log that weather conditions were such that he presumed the pilot would be unable to embark. The radio operator testified she received a telegram from the pilot during the forenoon of October 22nd stating the weather was bad and he could not come. I am satisfied that the Master knew that a pilot would not be available under the existing conditions of wind and sea. Accordingly, I am of the opinion that the Master decided to cross the Columbia River Bar without a pilot—an exceedingly gross error in navigation and a decision of sheer lunacy." (Op. Dist. Ct. Appx. B, Pet. for Cert., pp. 21-22).

Expert witness Captain Harold Dumble testified the master should never have committed his vessel to the shallow water of the Columbia River Bar where the seas would double in size and where a pilot could not possibly board (Tr. p. 43).

CONCLUSION

There is no reason for a review of the evidence by this Court. It is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

ERSKINE B. WOOD
Counsel for Respondent

JOHN R. BROOKE
WOOD, WOOD, TATUM,
MOSSER & BROOKE
Of Counsel